IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5876 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAFAT MOHEMUDBHAI RASULBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5876 of 2001

MS JAYSHREE C BHATT for Petitioner No. 1

MR SUDHANSHU S PATE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/11/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 15/5/2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. The learned advocate for the petitioner has submitted that the detaining authority at the time of passing order has mainly relied upon the case registered against the petitioner being CR No.86 of 2001 dtd.8/5/2001 registered with Kalupur Police Station for the offences punishable under Sections 392, 342, 120(B) and 114 of Indian Penal Code and under Sec.135(1) of Bombay Police Act. In the said offence, the petitioner has been arrested and sent in judicial custody on 10/5/2001 and since then, according to the learned counsel for the petitioner, the petitioner is in judicial custody. The detaining authority has passed order assuming that there is likelihood of preferring bail application before the Sessions Court in the aforesaid offence and obtain bail by the petitioner and there is likelihood that the petitioner will continue his illegal activities. This is not the ground for passing detention order. The Honourable Supreme Court in the decision of Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 SC 3675, the Honourable Supreme Court has held that :-

> "There must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order

based on such material is liable to be quashed and set asid...."

4. Since the detaining authority has passed the impugned detention order on the ground that the detenu is likely to be released on bail, the impugned order is required to be quashed and set aside in view of the above judgement reported in AIR 2000 SC 3675.

5. The petition is allowed. The impugned order of detention dated 15/5/2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu namely Rafat Mahemudbhai Rasulbhai Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

Rafik